

State Board of Equalization

OPERATIONS MEMO

For Public Release

No. 960
Date: July 6, 1990
Revised: April 30, 1991
Revised: January 22, 1993
Revised: September 1, 2001

SUBJECT: CATERING TRUCKS AND THEIR SUPPLIERS

This Operations Memo has been revised to remove the requirement for quarterly reports prepared by the district, and to provide direction for districts in their normal/routine compliance and audit programs of this industry.

I. PROVISIONS OF SECTION 6074

- A. The Board may, by written notice, require any person making sales to operators of catering trucks operated out of that person's facility, who resell the property in the regular course of business, to:
1. Obtain evidence the operator is a holder of a valid seller's permit.
 2. Submit a list of all operators on file, who purchase goods from that person, not more than three times each year. Each list shall:
 - a. Be provided to the Board within 30 days of the Board's request
 - b. Contain names and seller's permit numbers of those with valid seller's permits
 - c. Contain names, address and telephone numbers of those who did not provide a valid seller's permit
 3. Promptly notify the Board if a new purchasing operator does not provide evidence of a valid seller's permit within 30 days from first purchase.

Persons required, but who fail to do any of the above, may be subject to a penalty not to exceed \$500.00 for each failure.

- B. Persons making sales to operators who do not have seller's permits or whose permits have been revoked, shall report and pay the tax on property as if the property were sold at retail at the time of sale. Nothing stated here will relieve the operator of a catering truck of the obligations as a seller.
- C. If the Board finds a person's failure to comply with these provisions is due to reasonable cause beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty imposed. Any person seeking relief shall file a statement with the Board, under penalty of perjury, stating the facts for possible relief.

These amendments are not intended to penalize those persons selling to the operators of catering trucks, but rather to assist in a joint effort to curtail the loss of revenue from unreported taxable sales by operators not holding valid seller's permit.

II. DISTRICT RESPONSIBILITY

As part of an ongoing compliance program determined by the district, the following procedures are recommended:

- A. Identify and contact all catering commissaries (houses) located within the district to advise them of the requirements of this legislation.

Notice to Suppliers of Catering Trucks Operators (Exhibit A) has been provided for use by the districts in advising the houses.

- B. Notify the suppliers of the catering truck operator when the operator's seller's permit is revoked, by sending form letter BOE-570-A. Upon reinstatement of the seller's permit, form letter BOE-570-B must be sent to inform suppliers the permit can be accepted and is again valid.
- C. Issue request to each house for a listing of mobile truck caterers (operators) purchasing from them (Exhibit B).

The law does not specify the format in which the list should be supplied (i.e. alphabetically, etc.). Attempt to secure the list in a format that will minimize your time expended in verification.

- D. When the list is received:

- 1. Verify information where seller's permit numbers are provided.

2. Contact any operators without valid seller's permits to make immediate application, following the normal district procedures for unlicensed sellers.
3. The following guidelines should be used to determine whether a catering truck driver is an independent contractor or an employee of the catering house.
 - a. Indicators of employee status are:
 - 1) The driver's contract with the house does not identify the driver as an independent contractor.
 - 2) The driver receives a salary or commission from the house and the house withholds taxes, social security payments and carries unemployment or worker's compensation on the drivers.
 - 3) The house retains complete control over the detail of work performance (e.g. pricing, purchasing, etc.).
 - 4) Drivers must account to houses for all receipts.
 - 5) For income tax purposes, the house reports gross truck sales as their income and the driver reports as an employee.
 - b. Indicators of independent contractor status are:
 - 1) The contract between the catering house and driver specifies that the driver is an independent contractor.
 - 2) The driver does not receive a salary from the house, nor does the house withhold social security payments, unemployment or worker's compensation.
 - 3) The catering truck drivers are not required to purchase all food and supplies from the catering house leasing the truck.
 - 4) No accounting is made by the driver to the house for sales. The net profit from their sales is their income.
 - 5) For federal income tax purposes, the driver prepares a Schedule C "Profit or Loss from Business".

E. When the list is not received:

1. Within the specified time allowed, send the request (Exhibit B) again using certified mail.
2. If the house fails to comply with provisions outlined in Section 6074(a), issue follow-up request (Exhibit C) using certified mail.
3. If no response, create a compliance assessment in IRIS to apply the \$500.00 penalty as provided by Section 6074.
4. After the determination is issued and/or collected, issue another request for the list, using certified mail. If cooperation is still not obtained, repeat the process of assessing and collecting the penalty until compliance is obtained.

The list request procedure should be repeated when the district deems the procedure necessary to cause compliance but no more than three times in a calendar year.

III. OBSOLESCENCE

This operations memo will become obsolete when incorporated into the appropriate manuals.

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Attachments
Distribution: 1-D